

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TODD ALLEN SIMMONS,

Plaintiff,

v.

JEFF MACOMBER,

Defendant.

No. 2:23-cv-2962 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). See 28 U.S.C. § 636(c).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

6 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
7 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The
8 court will, however, grant leave to file an amended complaint.

9 Plaintiff submitted his complaint on the form provided by the court. On that form,
10 plaintiff references an attachment for the description of his claims. However, no attachment was
11 included in the filing submitted to the court. Therefore, there are no facts or law before the court
12 amounting to a claim upon which plaintiff might proceed.

13 In general terms, if plaintiff chooses to amend the complaint, plaintiff must demonstrate
14 how the conditions complained of have resulted in a deprivation of plaintiff’s constitutional
15 rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint,
16 plaintiff must allege in specific terms how each named defendant is involved. There can be no
17 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
18 defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976).
19 Furthermore, vague and conclusory allegations of official participation in civil rights violations
20 are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

21 Finally, plaintiff is informed that the court cannot refer to a prior pleading in order to
22 make plaintiff’s amended complaint complete. Local Rule 220 requires that an amended
23 complaint be complete in itself without reference to any prior pleading.

24 In accordance with the above, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff’s request for leave to proceed in forma pauperis (ECF No. 2) is granted.
- 26 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees
27 shall be collected and paid in accordance with this court’s order to the Director of the California
28 Department of Corrections and Rehabilitation filed concurrently herewith.

1 3. Plaintiff's complaint is dismissed.

2 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
3 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
4 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
5 number assigned this case and must be labeled "Amended Complaint." Failure to file an
6 amended complaint in accordance with this order will result in a recommendation that this action
7 be dismissed.

8 Dated: January 2, 2024



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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